

1 AUSTIN P. NAGEL, ESQ.  
California State Bar #118247  
2 GRACE E. FELDMAN, ESQ.  
California State Bar #261936  
3 LAW OFFICES OF AUSTIN P. NAGEL  
4 111 Deerwood Road, Suite 388  
San Ramon, CA 94583  
5 Telephone: (925) 855-8080  
6 Facsimile: (925) 855-8090

7 Attorneys for Secured Creditor,  
WELLS FARGO AUTO FINANCE  
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9 UNITED STATES BANKRUPTCY COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11

12 In Re:

Case No. 10-13397 AJ  
(Chapter 13 Proceeding)

13 BRIAN HAUB and  
TARA HAUB,

14 Debtors.  
15 \_\_\_\_\_/

SECURED CREDITOR, WELLS FARGO  
AUTO FINANCE's OBJECTION TO  
CONFIRMATION OF CHAPTER 13  
PLAN  
16

17 **MEETING OF CREDITORS:**

18 Date: October 4, 2010

Time: 12:00 p.m.

19 Ctrm: United States Trustee

777 Sonoma Avenue

20 First Floor, Room 116

21 Santa Rosa, CA 95403

**CONFIRMATION HEARING:**

22 Date: November 15, 2010

Time: 1:30 p.m.

23 Ctrm: 99 S. "E" Street,  
Santa Rosa, CA  
24

25 WELLS FARGO AUTO FINANCE (hereinafter referred to as "Secured Creditor")  
26 objects to confirmation of the Chapter 13 Plan proposed hereunder by Debtors, BRIAN HAUB  
27 and TARA HAUB (hereinafter collectively referred to as "Debtor") on the following grounds:  
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1           1.       On April 19, 2007, Debtors (as Buyer and Co-Buyer) entered into a written  
2       Retail Installment Sale Contract – Simple Interest Finance Charge (hereinafter referred to as  
3       “Security Agreement”) with Hansel Ford Lincoln Mercury (as Seller) which evidenced  
4       Debtor’s financed purchase of the 2007 Ford F150 pickup truck (Vehicle Identification  
5       Number 1FTPW14517KC66280) (hereinafter referred to as the “property”), which has become  
6       the subject of this action. The aforementioned Security Agreement was duly assigned by  
7       Hansel Ford Lincoln Mercury to Secured Creditor during the normal course of business on or  
8       about April 19, 2007.

10           2.       Upon executing the Security Agreement, a true and correct photocopy of  
11       which is filed separately herewith and which is incorporated herein by reference, and by  
12       subsequently taking possession of the property which was being financed by Secured  
13       Creditor, Debtor agreed and became obligated to pay the sum of \$43,667.15, with interest  
14       accruing at the contract rate of 13.31% per annum, for the financed purchase of the subject  
15       property. Further evidence of Secured Creditor's secured position is reflected on the  
16       Certificate of Title for the subject property, a true and correct photocopy of which is filed  
17       separately herewith and which is incorporated herein by reference.

19           3.       Based upon information derived from the automated Kelley Blue Book Auto  
20       Market Report, a true and correct photocopy of which is filed separately herewith and which  
21       is incorporated herein by reference, pursuant to 11 U.S.C. §506(a)(2) the property is  
22       currently believed to have a retail, replacement value to Debtor of \$26,110.00. This is the  
23       value indicated for collateral of this year, make, model and general features in the reference  
24       guide most commonly used source of valuation data used by Movant in the ordinary course  
25       of business for determining the value of this type of collateral.

1           4.       Secured Creditor objects to the \$20,000.00 valuation allocated to its secured  
2 collateral under Debtor's proposed Plan in that should Secured Creditor be forced to accept  
3 the low valuation of its secured claim hereunder, Secured Creditor's security interest will be  
4 severely diminished on collateral which already depreciates at a rapid rate during the normal  
5 course of its use.  
6

7           5.       The value allocated to Secured Creditor's collateral under Debtor's proposed  
8 Plan is substantially below the value given in the *Kelley Blue Book*. In the absence of  
9 further evidence explaining the valuation discrepancy, Secured Creditor contends that  
10 Debtor has not satisfied the burden under 11 U.S.C. §506(a)(2). Based thereupon, Debtor's  
11 proposed Plan does not comply with 11 U.S.C. §1325(a) because it does not pay Secured  
12 Creditor the present value of its secured claim and, therefore, Debtor's Plan cannot be  
13 confirmed as is presently proposed.  
14

15           6.       Secured Creditor further objects to the \$375.15 monthly adequate protection  
16 payments offered it under Debtor's proposed Plan in that the value of Secured Creditor's  
17 security will depreciate at a much higher rate than that at which Secured Creditor will  
18 receive adequate protection payments under the Plan.  
19

20           7.       Secured Creditor believes that if it is forced to accept its inclusion under  
21 Debtor's Plan as is presently proposed, Secured Creditor will be prejudiced by its position  
22 thereunder and Secured Creditor will continue to suffer substantial, mounting losses.

23           WHEREFORE, SECURED CREDITOR RESPECTFULLY MOVES:

- 24           1.       That confirmation of this Chapter 13 Plan be denied; or, in the alternative;  
25           2.       That Debtor's Plan hereunder be amended in order to allow Secured Creditor  
26 to receive the fully secured sums that are due and owing to it. More specifically, the  
27 replacement value to Debtor of the property should be set at \$26,110.00; and Secured  
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1 Creditor to be fully secured for the \$25,874.31 due and owing on the account at the time of  
2 filing.

3 3. That Debtor's Plan hereunder be amended in order to allow Secured Creditor  
4 to receive pre- and post-confirmation adequate protection payments of no less than \$495.00  
5 per month.  
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7 Dated: September 23, 2010

LAW OFFICES OF  
AUSTIN P. NAGEL

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/s/ Grace E. Feldman  
Attorneys for Secured Creditor,  
WELLS FARGO AUTO FINANCE